

**REMARKS**

**The Non-Statutory, Double-Patenting Rejections**

Claims 1-2, 4-5 and 7-32 were rejected based on the doctrine of obviousness-type double-patenting as being unpatentable over claims 1 and 2 of U.S. Patent No. 6,065,061 (hereinafter referred to as the “’061 Patent”) assigned to the same Assignee of the present application.

Applicants respectfully submit that these rejections are improper for at least the following reasons.

An obviousness-type double-patenting rejection requires:

(a) an indication of the differences between the inventions defined by the conflicting claims--e.g., comparing a claim in the ’061 Patent to a claim in the present application; and

(b) a statement of the reasons why a person of ordinary skill in the art would conclude that the invention defined in the claims of the present application are an obvious variation of the invention defined in a claim of the ’061 Patent (see MPEP §804(B)(1)).

Applicants respectfully submit that the Office Action does not set forth the differences and the reasons as required by MPEP §804(B)(1). Accordingly, Applicants respectfully submit that the rejections are improper and should be withdrawn.

Applicants note, however, that they are prepared to file a Terminal Disclaimer in response to the non-statutory, double-patenting rejection if the

claims of the present invention are found to be patentable over the other references cited in the Office Action.

**The Section 103 Rejections Based on U.S. Patent No. 5,903,558 to Jones et al. ("Jones") and the Examiner's Knowledge of Well Known Routing Techniques**

Claims 1-2, 4-5 and 7-32 were rejected under 35 U.S.C. §103(a) as being unpatentable over Jones in view of "well known techniques of routing." Applicants respectfully disagree and traverse this rejection for at least the following reasons.

Each of the claims of the present invention requires, among other things, routing information that specifies primary/first and alternative/secondary Internet protocol (IP) addresses and the communication/routing of data to an endpoint using the primary IP address except during period of service interruption in which case an alternative/secondary IP address is used. In contrast, as is apparently admitted by the Office Action, Jones does not disclose or suggest the use of "different IP numbers", nor does Jones disclose or suggest the use of an alternative IP address to route data during a service interruption. To overcome these deficiencies, the Office Action relies on "well known techniques."

Initially, Applicants note that such a rejection is improper. To properly reject the claims of the present invention based on "well known techniques" based on the Examiner's personal knowledge, the Examiner must provide an affidavit or declaration setting forth specific factual statements and

explanations to support the finding (see MPEP §2144.03). Because the Office Action does not set forth such an affidavit or declaration, Applicants respectfully submit that such a rejection is improper and should be withdrawn.

Even if such a rejection is proper, Applicants respectfully submit that the claims are not rendered obvious by a combination of Jones and well known routing techniques. Jones is directed at increasing the quality-of-service (QoS) of upstream and downstream data paths. It is wholly unrelated to communicating or routing data to an endpoint using an alternative or secondary IP address when a service interruption occurs, as in the claims of the present invention.

Contrary to statements in the Office Action, there is no disclosure or suggestion in Jones that Jones makes use of primary and alternative IP addresses. The Internet routers shown in FIGs. 2 and 3 of Jones, referred to in the Office Action, are shown connected to a cable router 304 and CCF/PSTN router 306 (see FIG. 3). These connections would not lead one of ordinary skill in the art to conclude that the Internet router was making use of primary and alternative IP addresses. Though Internet routers that exist today and were placed into service after the filing date of the present application may use primary and alternative IP addresses, such routers are not prior art and are therefore irrelevant to the patentability of the claims of the present invention.

It appears that the Examiner may be relying on the specification of the present application which discloses the use of primary and alternative IP addresses. Such reliance is impermissible hindsight.

In sum, Jones does not disclose or suggest the use of primary and alternative/secondary Internet protocol addresses nor the use of an alternative/secondary IP address during a service interruption to communicate or route data to an endpoint, as in the claims of the present invention nor has the Examiner set forth an affidavit or declaration which includes specific factual statements and an explanation in support of his statement that such features were well known at the time the present application was filed.

Accordingly, Applicants respectfully request withdrawal of the pending rejections and allowance of claims 1-2, 4-5 and 7-32.

**The Section 103 Rejection Based on Jones and Atarashi et al. ("Atarashi")**

Applicants note that claims 1-2, 4-5 and 7-32 were rejected under 35 U.S.C. §103(a) as being unpatentable over Jones in view of Atarashi. Applicants respectfully disagree and traverse this rejection for at least the following reasons.

Applicants note that claims 1-2, 4-5 and 7-32 are patentable over Jones in combination with Atarashi for the reasons set forth above with respect to Jones in combination with the Examiner's knowledge of well known routing techniques. It is respectfully submitted that Atarashi does not overcome the deficiencies stated above with respect to the combination of Jones and the Examiner's knowledge of well known routing techniques.

In addition, as the Office Action admits, Jones does not disclose or suggest the storing of a routing table which comprises a first Internet protocol address associated with routing data to an endpoint via a primary

communications channel and a second address associated with the routing of data to the endpoint over a secondary communications channel nor the routing of data as a function of a routing table, as in at least claims 4, 5, 14, 15, 20, 21, and 29-31. To overcome this deficiency, the Examiner relies on Atarashi.

It is respectfully submitted that the combination of Jones and Atarashi is improper for at least the following reasons.

To properly combine Jones and Atarashi, there must be some suggestion or motivation to make such a combination. It is respectfully submitted that there is no suggestion or motivation to make such a combination.

Jones is directed at techniques for improving the QoS between upstream and downstream data streams. In contrast, Atarashi is wholly unconcerned with the improvement of QoS between upstream and downstream data streams. Instead, Atarashi is concerned with overcoming problems related to the transfer of a client from a working server to a backup server. It is respectfully submitted that one of ordinary skill in the art would not be motivated to combine Jones with Atarashi because there is no suggestion or motivation to make such a combination.

In sum, it is respectfully submitted that the claims of the present invention would not have been rendered obvious to one of ordinary skill in the art at the time the present application was filed based on a combination of the disclosures in Jones and Atarashi.

Accordingly, Applicants respectfully request withdrawal of the pending rejections and allowance of claims 1-2, 4-5 and 7-32.

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact John E. Curtin at the telephone number of the undersigned below.

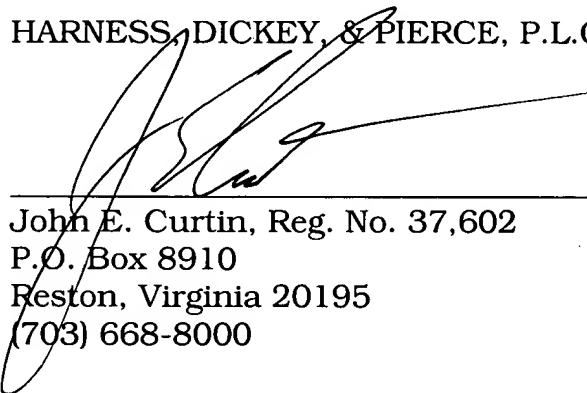
In the event this Response does not place the present application in condition for allowance, applicant requests the Examiner to contact the undersigned at (703) 668-8000 to schedule a personal interview.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 08-0750 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17; particularly, extension of time fees.

Respectfully submitted,

HARNESS, DICKEY, & PIERCE, P.L.C.

By



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